

Appl. No. : 10/854,076
Filed : May 26, 2004

REMARKS

The applicants respectfully submit that the amendments add no new matter and are fully supported by the application as originally filed.

Amendments to the Claims and Specification

Claim 14 has been amended to recite “a textile surface” and “applying onto said surface a solution”.

Claim 1-13, 20 and 25-27 have been cancelled.

Newly Added

No new claims have been added.

Rejections under 35 U.S.C. §112

7. The Examiner has rejected Claims 14-24 under 35 U.S.C. §112, first paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 20 has been cancelled.

Claim 14 has been amended to recite “a textile surface” and “said surface”, thus providing a proper antecedent basis in Claim 14.

In Claim 15, the Examiner objects to the phrase “at least 50% an effective at killing the dust mites . . .” as not understood. Claim 15 has been amended to read “wherein said composition has at least 50% kill efficacy for dust mites after 30 minutes under submersion conditions. This language and the explanation of this language is found in [86] to [91] of the specification.

Claims 16-19 and 21-24 are dependent on amended Claim 14 and the objection is overcome.

Rejections under 35 U.S.C. §102(b)

9. The Examiner has rejected Claims 14-21 under 35 U.S.C. §102(b) as being anticipated by Zocchi et al. (US 6,080,792). Claim 20 has been cancelled.

For a proper rejection of a claim under section 102, the cited reference must disclose all elements, features, and steps of the claim. See e.g., *E.I. du Pont de Nemours & Co. v.*

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Phillips Petroleum Co., 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988) (emphasis added).

Claim 14 has been amended to claim a “solution” comprising a glycol ether, a glycol ether ester, or combination thereof, wherein one of said glycol ether or glycol ether ester has less than about 15% solubility in water at 20⁰ C. Zocchi discloses foam compositions containing 2% to 10% of a hydrocarbon propellant. The compositions of Zocchi are two phases and not solutions. Therefore, Zocchi does not teach solutions and does not anticipate all the elements of Claim 14.

Claims 15-19 and 21 are dependent on Claim 14, therefore Zocchi does not teach solutions and does not anticipate all the elements of Claim 15-19 and 21.

10. The Examiner has rejected Claims 14-21 under 35 U.S.C. §102(e) as being anticipated by Garabedian et al. (US2004/0144406). Claim 20 has been cancelled.

Claim 14 has been amended to claim a “solution” comprising a glycol ether, a glycol ether ester, or combination thereof, wherein one of said glycol ether or glycol ether ester has less than about 15% solubility in water at 20⁰ C. Garabedian discloses aerosol compositions containing 5% propellant. The compositions of Garabedian are two phases and not solutions. Therefore, Garabedian does not teach solutions and does not anticipate all the elements of Claim 14.

Claims 15-19 and 21 are dependent on Claim 14, therefore Garabedian does not teach solutions and does not anticipate all the elements of Claim 15-19 and 21.

Rejections under 35 U.S.C. §102(b) and 35 U.S.C. §103(a)

13. The Examiner has rejected Claims 14-24 under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Klier et al. (US 5,597,792). Claim 20 has been cancelled.

Claim 14 has been amended to claim a “solution” comprising a glycol ether, a glycol ether ester, or combination thereof, wherein one of said glycol ether or glycol ether ester has less than about 15% solubility in water at 20⁰ C. Klier discloses emulsions which “upon standing the emulsions form at least two phases wherein at least one phase is an oil continuous microemulsion” (col. 9, lines 16-18 of Klier). The compositions of Klier are two phases and not solutions. Therefore, Klier does not teach solutions and does not anticipate all the elements of Claim 14.

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Claims 15-19 and 21-24 are dependent on Claim 14, therefore Klier does not teach solutions and does not anticipate all the elements of Claim 15-19 and 21-24.

The Examiner maintains that Claims 14-24 are obvious over Klier. The Examiner notes that Klier "teaches high water content oil continuous microemulsions and emulsions" The compositions of Klier are two phases and not solutions.

It is well settled law that in order to properly support an obviousness rejection under 35 U.S.C. § 103, there must have been some teaching **in the prior art** to suggest to one skilled in the art that the claimed invention would have been obvious. W. L. Gore & Associates, Inc. v. Garlock Thomas, Inc., 721 F.2d 1540, 1551 (Fed. Cir. 1983). More significantly,

The consistent criteria for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this [invention] should be carried out and would have a reasonable likelihood of success, viewed in light of the prior art. . . . **Both the suggestion and expectation of success must be founded in the prior art, not in the applicant's disclosure . . .** In determining whether such a suggestion can fairly be gleaned from the prior art, the full field of the invention must be considered; for the person of ordinary skill in the art is charged with knowledge of the entire body of technological literature, including that which might lead away from the claimed invention.

(emphasis added) In re Dow Chemical Company, 837 F.2d 469, 473 (Fed. Cir. 1988).

Therefore, since Klier does not teach solutions, there is no suggestion or expectation of success that the solutions of Claim 14 would be effective at killing dust mites and Claim 14 is not obvious over Klier. Claims 15-19 and 21-24 are dependent on Claim 14, therefore Claims 15-19 and 21-24 are not obvious over Klier.

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CONCLUSIONS

In view of the foregoing amendments and remarks, Applicants submit that the application is in condition for allowance. If, however, some issue remains that the Examiner feels may be addressed by Examiner's amendment, the Examiner is cordially invited to call the undersigned for a brief discussion.

Please charge any additional fees, including fees for additional extensions of time, or credit overpayment to Deposit Account No. 03 2270.

Respectfully submitted,
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